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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 JOHN LOFTON, an individual, on his own
14 behalf and on behalf of all others similarly
situated,

15 Plaintiff,

16 v.

17 VERIZON WIRELESS (VAW) LLC, and
18 DOES 1-100, inclusive,

19 Defendants.
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No. C 13-05665 YGR

**~~PROPOSED~~ ORDER GRANTING
PRELIMINARY APPROVAL OF (1)
SETTLEMENT AGREEMENT; AND (2)
PLAN OF ALLOCATION**

AS MODIFIED BY THE COURT

Date: January 26, 2016
Time: 2:00 p.m.
Location: Courtroom 1
Ronald V. Dellums Federal Bldg.
1301 Clay Street
Oakland, California 94612

1 Plaintiff John Lofton's ("Lofton") unopposed Motion for Preliminary Approval of Class
 2 Action Settlement (Dkt. No. 193) was heard by this Court on January 26, 2016, before the
 3 undersigned. All Parties appeared through their counsel of record. Defendant Verizon Wireless
 4 (VAW) LLC ("Verizon") does not oppose the Motion. The first portion (Section I) of this
 5 Preliminary Approval Order applies to the Parties' proposed Stipulation and Settlement
 6 Agreement (Dkt. No. 193-3, "Settlement Agreement"). The following portion (Section II) of this
 7 Preliminary Approval Order applies exclusively to Lofton's proposed Plan of Allocation (Dkt.
 8 No. 197, "Plan").

9 Based on the Motion and supporting Memorandum of Points and Authorities and the
 10 declarations in support thereof, the Settlement Agreement, Plaintiff's Plan, and the arguments of
 11 counsel at the hearing on the Motion, and with good cause appearing, the Court rules as follows:

12 **I. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

13 1. The capitalized terms used in this Section I of this Preliminary Approval Order
 14 have the same meaning as defined in the Settlement Agreement.

15 2. The Court has jurisdiction over the subject matter of this Action and over all
 16 claims raised therein and all Parties thereto, including the Class Members.

17 3. Subject to further consideration by the Court at the time of the Final Approval
 18 Hearing, the Court preliminarily approves the form and content of the Parties' Stipulation and
 19 Settlement Agreement, and determines that it falls within the range of possible final approval and
 20 merits submission to the Class Members for their consideration, and therefore preliminarily
 21 approves the Settlement as fair, reasonable, and adequate.

22 4. For settlement purposes only, the Court certifies the Classes, which are defined as
 23 follows:

24 a. "IPA Class" or "IPA Class Members" means all California residents who,
 25 between September 10, 2010 and the date on which Notice is completed, and while located
 26 within the state of California, received on their cellular telephone one or more telephone calls
 27 from Collecto in its capacity as a third-party vendor engaged by Verizon to collect Pre-Writeoff
 28

1 Debts, where the call was answered by the recipient. The IPA Class excludes any person which
2 Verizon's records identify as a current or past Verizon subscriber.

3 b. "TCPA Class" means all natural persons residing in the United States
4 who, between June 14, 2008 and the date on which Notice is completed, received one or more
5 telephone calls to their cellular telephone number from a representative of Collecto in its
6 capacity as a third-party vendor engaged by Verizon to collect Pre-Writeoff Debts. The TCPA
7 Class excludes any person which Verizon's records identify as a current or past Verizon
8 subscriber.

9 5. The Court preliminarily finds that: (a) the numerosity, typicality, commonality,
10 and adequacy requirements of Rule 23(a) of the Federal Rules of Civil Procedure appear to be
11 satisfied for Lofton and the Classes; (b) in accordance with Federal Rule of Civil Procedure
12 23(b), common issues of fact and law appear to predominate; and (c) also in accordance with
13 Rule 23(b), certification of the Classes is superior to any other available methods of adjudication.

14 6. The Court appoints the law firms of Parisi & Havens LLP and Preston Law
15 Offices as Class Counsel and appoints Lofton as class representative. The Court preliminarily
16 finds that Lofton and Class Counsel fairly and adequately represent and protect the interests of
17 the absent Settlement Class Members in accordance with Federal Rule of Civil Procedure 23.

18 7. A Final Approval Hearing shall be held in Courtroom 1 of the Federal Courthouse
19 at 1301 Clay Street, Oakland, California, at **2:00 p.m. on May 24, 2016**, to address: (a) whether
20 the proposed Settlement should be finally approved as fair, reasonable, and adequate so that the
21 Final Approval Order and Judgment should be entered; (b) whether Class Counsel's Fee
22 Application should be granted; (c) whether Lofton's Incentive Award Application should be
23 granted; and (d) whether the Plan of Allocation submitted by Class Counsel should be finally
24 approved. Consideration of the Fee Application, Incentive Award Application, and Plan of
25 Allocation shall be separate from consideration of whether the proposed Settlement should be
26 approved, and any combination of the Court's rulings on each motion or application shall be
27 solely for the convenience of the Court.

1 8. Lofton and Class Counsel shall file their motion for final approval of the
2 Settlement Agreement and any requests for fee or incentive awards on or before **April 14, 2016**.

3 9. Pursuant to the All Writs Act, 28 U.S.C. § 1651(a) and consistent with the Anti-
4 Injunction Act, 28 U.S.C. § 2283, the Court shall exercise exclusive and continuing jurisdiction
5 over the Action, as well as any claim or cause of action between the Parties, their respective
6 Counsel, and/or the Claims Administrator which relates to the Action, the Settlement, or the Plan
7 and/or their negotiation or implementation. With the exception of such proceedings as are
8 necessary to implement, effectuate, and grant final approval to the terms of the Settlement
9 Agreement and the Plan, all proceedings are stayed in this Action and all Class Members are
10 enjoined from commencing or continuing any action or proceeding in any court or tribunal
11 asserting any claims released under the Settlement Agreement, unless and until the Class
12 Member timely files a valid Request for Exclusion as defined in the Settlement Agreement. The
13 Court finds this relief is necessary in aid of the Court's jurisdiction and to protect or effectuate
14 the Court's judgments (including the Final Approval Order). However, for the avoidance of any
15 doubt, and notwithstanding this paragraph, the Court does not stay or exercise any jurisdiction
16 over any claims alleged in (or which may be asserted in) the multidistrict litigation proceeding
17 pending before the United States Court for the District of Massachusetts under the caption *In re*
18 *Collecto, Inc. Telephone Consumer Protection Act (TCPA) Litigation*, No. MDL 14-md-2513-
19 RGS ("*In re Collecto*"), and the stay does not apply to any parties excluded from the term
20 Released Parties in the Settlement Agreement.

21 10. The Court appoints **A.B. Data, Ltd.** as the Settlement Administrator in this
22 Action. In accordance with the Parties' Settlement Agreement and the Orders of this Court, the
23 Settlement Administrator shall effectuate the provision of Notice to the Settlement Classes,
24 including CAFA Notice, and shall administer the Settlement claims and distribution process.
25 The Settlement Administrator shall not invoice more than \$499,342 in total.

26 11. The Court approves, as to form and content, Notice substantially in the forms
27 attached as Exhibits D through G to the Settlement Agreement.
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1 a. Within 10 days of the Court's entry of this Preliminary Approval Order,
2 the Settlement Administrator will ensure that the Website Notice is publicly accessible via the
3 Internet.

4 b. Within 25 days of the Court's entry of this Preliminary Approval Order,
5 the Settlement Administrator will mail Direct Notice to the most recent address available for all
6 Class Members on the Class List who received calls from Collecto on or after June 1, 2010,
7 through and including January 31, 2013. Before mailing any Direct Notice, the Settlement
8 Administrator will use a National Change of Address database to identify and update any
9 outdated addresses. Direct Notice shall be substantially in the form attached to the Settlement
10 Agreement as Exhibit D.

11 c. As soon as possible after entry of this Preliminary Approval Order, the
12 Settlement Administrator will ensure Publication Notice is given, which shall include delivery of
13 165,000,000 impressions of online text and banner ads via Facebook over the course of five
14 weeks and one-time publication in *People* magazine of a one-third page notice. Such notice shall
15 be substantially in the form attached to the Settlement Agreement as Exhibit E.

16 d. Not later than 65 days following the entry of this Preliminary Approval
17 Order, the Settlement Administrator shall file with the Court declarations attesting to compliance
18 with this paragraph 11.

19 12. The Court finds that the Parties' plan for providing Notice to the Classes as
20 described in Article V of the Settlement Agreement: (a) constitutes the best notice practicable
21 under the circumstances of this Action; (b) constitutes due and sufficient notice to the Classes of
22 the pendency of the Action, the proposed certification of the Classes, the terms of the Settlement
23 Agreement, and the Final Approval Hearing; and (c) complies fully with the requirements of the
24 Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

25 13. The Court further finds that the Parties' plan for providing Notice to the Classes,
26 as described in Article V of the Settlement Agreement, will adequately inform members of the
27 Classes of their right to exclude themselves from the Classes so as not to be bound by the
28 Settlement Agreement. Any member of the Classes who desires to be excluded from the

1 Classes, and therefore not bound by the terms of the Settlement Agreement, must submit to the
2 Settlement Administrator, pursuant to the instructions set forth in the Notice, a timely and valid
3 written Request for Exclusion, submitted online or postmarked by **May 4, 2016**. To be valid, a
4 Request for Exclusion must (a) be submitted by a Settlement Class Member; (b) be submitted to
5 the Settlement Administrator and postmarked by a date not later than 20 days before the Final
6 Approval Hearing, or, in the case of a Request for Exclusion submitted online, submitted by a
7 date not later than 20 days before the Final Approval Hearing; (c) contain the Settlement Class
8 Member's name, address and telephone number; and (d) otherwise comply with the instructions
9 set forth in the Notice. Not later than **May 9, 2016**, the Settlement Administrator shall prepare
10 and deliver to Class Counsel, who shall file it with the Court, and to Verizon's Counsel, a report
11 stating the total number of persons that have submitted timely and valid Requests for Exclusion.

12 14. Any member of the Classes who elects to be excluded shall not be entitled to
13 receive any of the benefits of the Settlement, shall not be bound by the release of any claims
14 pursuant to the Settlement Agreement, and shall not be entitled to object to the Settlement or
15 appear at the Final Approval Hearing.

16 15. Any Settlement Class Member who does not submit a valid and timely Request
17 for Exclusion may object to the Settlement Agreement, Class Counsel's Fee Application, the
18 Incentive Award Application, and/or the Plan of Allocation. Any Settlement Class Member who
19 wishes to object must file with the Court, by no later than **May 4, 2016**, a written objection,
20 which must include: (1) a detailed statement of the reasons for the objection; and (2) the
21 objecting Settlement Class Member's name, address, and telephone number. Any objecting
22 Settlement Class Member shall have the right to appear and be heard at the Final Approval
23 Hearing, either personally or through an attorney retained at the Settlement Class Member's own
24 expense. Any such Settlement Class Member who intends to appear at the Final Approval
25 Hearing must so indicate in his or her written objection. Failure to indicate an intention to
26 appear may result in the Court declining to hear the objecting Settlement Class Member or the
27 Settlement Class Member's counsel at the Final Approval Hearing.

1 16. Class Counsel shall file a supplemental brief in support of final settlement
2 approval that responds to any objections by **May 13, 2016**.

3 17. Service of all papers on counsel for the Parties shall be made as follows: for
4 Class Counsel, to: Ethan Preston, Preston Law Offices, 4054 McKinney Avenue, Suite 310,
5 Dallas, Texas 75204; for Verizon's Counsel, to Jonathan Blavin, Esq. and Ellen Richmond, Esq.,
6 Munger Tolles & Olson LLP, 560 Mission St., 27th Floor, San Francisco, California 94105.

7 18. Any Settlement Class Member who does not make an objection in the time and
8 manner provided shall be deemed to have waived such objection and forever shall be foreclosed
9 from making any objection to, or appealing, the fairness or adequacy of the proposed Settlement,
10 the payment of attorneys' fees and expenses and incentive awards, the Plan of Allocation, the
11 Final Approval Order, and the Judgment.

12 19. In the event that the proposed Settlement is not approved by the Court, or in the
13 event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and
14 all Orders entered in connection therewith shall become null and void, shall be of no further
15 force and effect, and shall not be used or referred to for any purposes whatsoever in this Action
16 or in any other case or controversy. In such event, the Settlement Agreement and all negotiations
17 and proceedings directly related thereto shall be deemed to be without prejudice to the rights of
18 any and all of the Parties, who shall be restored to their respective positions as of the date and
19 time immediately preceding the execution of the Settlement Agreement.

20 20. The Court may, for good cause, extend any of the deadlines set forth in this Order
21 without further notice to the Class Members. The Final Approval Hearing may, from time to
22 time and without further notice to the Class Members, be continued by order of the Court.

23 21. Verizon shall provide to the Settlement Administrator customer information
24 necessary to implement the terms of the Settlement Agreement notwithstanding any limitations
25 on use, or prohibitions on disclosure, which might otherwise apply to such information under 47
26 U.S.C. § 222, California Public Utilities Code § 2891, or any other applicable law. Verizon shall
27 provide Class Counsel and the Settlement Administrator with information, to the extent
28 available, regarding the account history of any person that files an objection or a claim, as

needed to evaluate or respond to the objection or the claim. Nothing herein constitutes a ruling by the Court that any information provided by Verizon to the Settlement Administrator or to Class Counsel is restricted by 47 U.S.C. § 222, California Public Utilities Code § 2891, or any other law; instead, this paragraph represents a determination that even if so restricted, disclosure as set forth herein is appropriate and consistent with the letter and the spirit of such provisions.

22. All information received pursuant to the preceding paragraph shall be kept confidential and used solely for the purpose of implementing the Settlement Agreement. Such information shall not be disclosed or used for any other purpose without the consent of the providing party or pursuant to an order of the Court.

23. Federal Rule 6(a) applies to the calculation of any deadline or time period set forth above. In particular, where the last day of any such time period, is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. However, Rule 6(d) shall not extend or apply to any time period set forth above.

II. PRELIMINARY APPROVAL OF PLAN OF ALLOCATION

24. The capitalized terms used in this Section II of this Preliminary Approval Order have the same meaning as defined in the Plan, or in the Settlement Agreement.

25. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Class Members.

26. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves the form and content of Lofton's Plan of Allocation, and determines that it falls within the range of possible final approval and merits submission to the Class Members for their consideration, and therefore preliminarily approves the Plan as fair, reasonable, and adequate to the Classes.

27. The Court approves and appoints A.B. Data, Ltd., at 600 A.B. Data Drive, Milwaukee, Wisconsin 53217, as the Settlement Administrator.

28. The Settlement Administrator shall perform (to the extent it has not already done so) the identification of Class Members and the calculation of Shares as set forth in Section 2,

1 2.1, 2.2, and 2.3 of the Plan. The Settlement Administrator shall perform (to the extent it has not
2 already done so) the preparation of the Class List as set forth in Section 2.4 of the Plan.


3 29. Class Counsel and the Settlement Administrator shall prepare and distribute the
4 Claims Form as set forth in Section 3.1 of the Plan. Class Counsel and the Settlement
5 Administrator shall review and approve (or disapprove) Claims Forms (and any supplemental
6 documentation or evidence) submitted to the Settlement Administrator as set forth in Section 3.1.

7 30. The Final Approval Hearing referenced in Section I, paragraph 7, above, shall
8 address whether the Plan of Allocation submitted by Class Counsel should be finally approved.

9 This Order terminates Docket Number 193.

10
11 **IT IS SO ORDERED.**

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13 Dated: January 28, 2016

14 
Honorable Yvonne Gonzalez Rogers
United States District Judge